

# Official Zoning Code Interpretation



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Requested Interpretation		Case Number
<p>UDO Section 9.1.C.7. excludes specific Tree Conservation Areas by stating: "Any area devoted or to be devoted to streets, future right-of-way reservation, sidewalks, driveways, walkways, storm drainage facilities, including without limitation, pipes, energy dissipaters and stormwater control measures which require the removal of vegetation" is excluded.</p> <p>Urban Forestry is requiring primary tree conservation in the natural low area of the property where we are proposing our "stormwater control measures", as allowed above, by citing UDO Section 9.1.4.A and saying their review "is consistent with the way Urban Forestry has always reviewed the tree conservation areas".</p> <p>The exclusions of the UDO are very clear. The intention of the "Excluded Areas" are listed in 9.1.C.7 is to allow stormwater control measures in the natural low areas of properties where existing receiving pipes are present. Typical review processes cannot take precedence over specific exclusions identified in the UDO.</p>		UI-2-17
Site Address/PIN: 1709 Spring Forest Road Subdivision S-70-16 TRN 491598		
Date Submitted: Jan. 27, 2017	Date Issued: Feb. 8, 2017	Code Sections Affected: 9.1.4.C

## STAFF ANALYSIS

The applicant asks whether or not a stormwater device can exempt an area from required tree conservation. Article 9.1 of the Unified Development Ordinance establishes the requirements for tree conservation. All development plans for properties in excess of two acres in size must provide tree conservation areas. The areas designated for tree conservation are described in section 9.1.4. The UDO contains a progression of qualifying areas, beginning with primary areas listed in section 9.1.4.A, continuing with secondary areas listed in section 9.1.4.B. These qualifying areas are listed sequentially in order of application. The UDO specifically contemplates site constraints that may conflict with the location for tree conservation areas in section 9.1.4.C), which excludes "any area devoted to or to be devoted to streets, future right-of-way reservation, sidewalks, driveways, walkways, storm drainage facilities, including without limitation, pipes, energy dissipaters and stormwater control measures which require removal of vegetation."

The UDO does not qualify these exemptions; for instance, there is no language that states these exclusions shall be located in the most practical location, nor it does not state that they cannot be located in the most practical location. In this case, since the UDO is silent on the issue staff must rely on what the UDO specifically excludes.

## STAFF INTERPRETATION

Based on the analysis above and the clear wording in the UDO it is evident that Stormwater Control measures are specifically exempted from the tree conservation area requirements and may be located in an area that might otherwise qualify for tree conservation area. Administrative staff cannot apply the code standards in a manner different from the clear regulatory language.

## SIGNATORY

Travis R. Crane, Planning and Zoning Administrator